

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #2	CCRB Case #: 201908721	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 09/27/2019 8:20 PM	Location of Incident: Mermaid Avenue and West 24th Street	Precinct: 60	18 Mo. SOL 3/27/2021	EO SOL 11/11/2021	
Date/Time CV Reported Fri, 09/27/2019 9:20 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Fri, 10/04/2019 11:14 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POM Michael Cefarello	21250	962303	060 PCT
3. POF Nicole Fox	22143	962410	060 PCT
4. POM Michael Kennedy	20564	958750	060 PCT
5. POM Joseph Borrero	28310	964401	060 PCT
6. POM Theodore Papadopoulos	16726	957935	060 DET
7. An officer			
8. LSA Vincent Varriano	00000	937676	PSA 1
9. POM Oliver Vidal	26155	958150	PSA 1
10. POM Jared Martinez	13394	959795	PSA 1
11. POF Dorina Hajderlli	20537	959681	PSA 1

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Edward Dacimo	05318	944478	PSA 1
2. POF Christina Dagostino	04033	958460	060 PCT
3. POM James Robinson	09334	953322	060 PCT
4. SGT John Romani	02117	949568	PSA 1
5. POM Christophe Padin	29578	950996	PSA 1
6. POM Luis Palhete	06450	954206	PSA 1
7. LT Michael Desposito	00000	948876	060 PCT
8. DI Joseph Hayward	00000	923936	060 PCT
9. POM Joseph Mcdonald	03493	964642	060 PCT
10. POM Errol Thomas	19309	959295	PSA 1
11. POM Alan Lee	12637	961881	060 PCT
12. POM Ertan Kulug	17266	952955	PSA 1
13. LT Charlton Telford	00000	923244	PSA 1
14. POM Juan Cifuentes	23830	928074	060 PCT
15. POM Jonathan Warfield	11222	962159	060 PCT
16. SGT Deshawn Simpkins	03202	952242	060 PCT
17. POM Sylwester Kopec	07828	956806	PSA 1
18. POF Leah Hernandez	15598	960665	PSA 1
19. POM Thomas Fiorella	18179	952734	060 PCT
20. POM Brian Romero	12029	965850	PSA 1
21. POF Joseline Diaz	05109	966542	PSA 1
22. POM Christophe Collins	08723	961702	060 PCT
23. POM Thomas Petronis	12109	957032	060 PCT
24. POM Rafik Patel	28903	939267	PSA 1
25. SGT Anzor Zak	00462	955687	PSA 4

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Force: An officer used a chokehold against § 87(2)(b)	
B. An officer	Force: An officer restricted § 87(2)(b)'s breathing.	
C.POM Michael Kennedy	Force: Police Officer Michael Kennedy used physical force against § 87(2)(b)	
D.POM Joseph Borrero	Force: Police Officer Joseph Borrero used physical force against § 87(2)(b)	
E.POM Michael Cefarello	Force: Police Officer Michael Cefarello used physical force against § 87(2)(b)	
F.POF Nicole Fox	Force: Police Officer Nicole Fox used physical force against § 87(2)(b)	
G. Officers	Force: Officers used physical force against § 87(2)(b)	
H. Officers	Force: Officers used physical force against § 87(2)(b)	
I. Officers	Force: Officers restricted § 87(2)(b)'s breathing.	
J.POM Michael Kennedy	Discourtesy: Police Officer Michael Kennedy spoke discourteously to § 87(2)(b)	
K.POM Michael Kennedy	Off. Language: Police Officer Michael Kennedy made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
L.POM Theodore Papadopoulos	Abuse: Police Officer Theodore Papadopoulos stopped § 87(2)(b)	
M.POM Theodore Papadopoulos	Force: Police Officer Theodore Papadopoulos used physical force against § 87(2)(b)	
N.POM Theodore Papadopoulos	Force: Police Officer Theodore Papadopoulos restricted § 87(2)(b)'s breathing.	
O.POM Oliver Vidal	Force: Police Officer Oliver Vidal restricted § 87(2)(b)'s breathing.	
P.POM Oliver Vidal	Force: Police Officer Oliver Vidal used physical force against § 87(2)(b)	
Q.LSA Vincent Varriano	Force: Lieutenant Vincent Varriano used a chokehold against § 87(2)(b)	
R.LSA Vincent Varriano	Force: Lieutenant Vincent Varriano restricted § 87(2)(b)'s breathing.	
S.LSA Vincent Varriano	Discourtesy: Lieutenant Vincent Varriano spoke discourteously to § 87(2)(b)	
T.LSA Vincent Varriano	Force: Lieutenant Vincent Varriano used physical force against § 87(2)(b)	
U.POM Joseph Borrero	Discourtesy: Police Officer Joseph Borrero spoke discourteously to § 87(2)(b)	
V.POF Dorina Hajderlli	Force: Police Officer Dorina Hajderlli used physical force against § 87(2)(b)	
W.POM Jared Martinez	Force: Police Officer Jared Martinez used physical force against § 87(2)(b)	
X.POM Joseph Borrero	Force: Police Officer Joseph Borrero used a chokehold against § 87(2)(b)	
Y.POM Joseph Borrero	Force: Police Officer Joseph Borrero used physical force against § 87(2)(b)	

Case Summary

On September 27, 2019, § 87(2)(b) filed this complaint on behalf of his son § 87(2)(b) his wife § 87(2)(b) and Amur § 87(2)(b) in person at the PSA 1 stationhouse, generating IAB log number 19-35929. IAB referred this case to the CCRB, where it was received on October 4, 2019 under log number 19-36243 (Board Review 01).

On September 27, 2019, at approximately 8:20 p.m., § 87(2)(b) was attacked by § 87(2)(b) and § 87(2)(b) at West 24th Street and Mermaid Avenue in Brooklyn. § 87(2)(b) sought the help of Police Officer Michael Kennedy, Police Officer Joseph Borrero, Police Officer Nicole Fox, and Police Officer Michael Cefarello of the 60th Precinct, who attempted to break up the fight and called for assistance while the fighting continued.

An unidentified officer allegedly brought § 87(2)(b) down to the ground by grabbing him around his neck (**Allegations A and B – Force: Chokehold, Restricted Breathing**, § 87(2)(g)), and then all four officers allegedly punched him multiple times (**Allegations C, D, E, and F – Force – Physical Force**: § 87(2)(g)). An officer allegedly placed a knee on § 87(2)(b) back (**within Allegation B**). § 87(2)(b) allegedly punched Police Officer Kennedy in the back of his head. Multiple officers responded to the scene, and officers allegedly brought § 87(2)(b) and § 87(2)(b) down to the ground, punched them, and put knees on § 87(2)(b)s back (**Allegations G, H, and I – Force – Physical Force, Restricted Breathing**; § 87(2)(g)). An unidentified investigator for a bail bondsman knelt on § 87(2)(b)s neck or back while he was on the ground (§ 87(2)(g)). The officers placed § 87(2)(b) and § 87(2)(b) under arrest (Board Review 02). Police Officer Kennedy approached § 87(2)(b) and said, “He’s mine, this pussy. That pussy’s mine” (**Allegations J and K – Discourtesy: Word, Offensive Language: Gender**; § 87(2)(g)).

§ 87(2)(b) ran across Mermaid Avenue, and Police Officer Theodore Papadopoulos of PSA 1 ran after § 87(2)(b) across Mermaid Avenue and south on West 24th Street, where § 87(2)(b) fell to the ground and the officers attempted to handcuff him (**Allegation L – Abuse of Authority: Stop**, § 87(2)(g)). Police Officer Papadopoulos punched § 87(2)(b) (**Allegation M – Force: Physical Force**, § 87(2)(g)). Police Officer Papadopoulos placed his knee on § 87(2)(b)s back (**Allegations N – Force: Restricted Breathing**; § 87(2)(g)). Police Officer Vidal allegedly placed his knee on § 87(2)(b)s back and punched § 87(2)(b) (**Allegations O and P – Force: Restricted Breathing, Physical Force**; § 87(2)(g)). and Lieutenant Vincent Varriano of PSA 1 allegedly placed his knee in § 87(2)(b)s neck (**Allegations Q and R - Force: Chokehold, Restricted Breathing**, § 87(2)(g)). § 87(2)(b) said he could not breathe, and Lieutenant Varriano allegedly responded, “I don’t give a fuck, I don’t care” (**Allegation S - Discourtesy: Word**, § 87(2)(g)). As the officers stood up, Lieutenant Varriano allegedly kicked § 87(2)(b)s face (**Allegation T – Force: Physical Force**, § 87(2)(g)). and Police Officer Papadopoulos allegedly scrubbed § 87(2)(b)s face against the pavement (**within Allegation M**).

While placing § 87(2)(b) into a police vehicle. Police Officer Borrero told him to “shut the fuck up” (**Allegation U – Discourtesy: Word**, § 87(2)(g)). § 87(2)(b)s mother, § 87(2)(b) attempted to approach § 87(2)(b) and Police Officer Dorina Hajderlli of the 60th Precinct allegedly pushed her away (**Allegation V – Force: Physical Force**, § 87(2)(g)). § 87(2)(b) felt faint and requested an ambulance, and the officers called one for her.

Police Officer Vidal took § 87(2)(b) back to the corner of West 24th Street and Mermaid Avenue and removed § 87(2)(b)s handcuffs. At this point § 87(2)(b) identified § 87(2)(b) as the

person who punched Police Officer Kennedy. Police Officer Jared Martinez of PSA 1 allegedly swept § 87(2)(b)'s legs from underneath him, causing him to fall to the ground (**Allegation W – Force: Physical Force**, § 87(2)(g)). Police Officer Borrero allegedly placed his arm on § 87(2)(b)'s neck and his knee on § 87(2)(b)'s back without restricting his breathing, and allegedly pushed § 87(2)(b)'s face into the ground and elbowed § 87(2)(b) in his head (**Allegations X and Y – Force: Chokehold**, § 87(2)(g)). **Physical Force**, § 87(2)(g) § 87(2)(b) was handcuffed, and Police Officer Borrero allegedly pushed him into the back of a police vehicle (**within Allegation Y**). § 87(2)(b) was arrested and taken to the 60PCT stationhouse (Board Review 02).

A total of 60 body-worn camera (BWC) videos were received for this case. The videos are attached in IA #s 184-213 (Board Review 23 – 24) and 397 (Board Review 20), and they are summarized in IA #s 258 and 398 (Board Review 43 - 44).

Findings and Recommendations

Allegation (A) Force: An officer used a chokehold against § 87(2)(b)

Allegation (B) Force: An officer restricted § 87(2)(b)'s breathing.

Allegation (C) Force: Police Officer Michael Kennedy used physical force against § 87(2)(b)

Allegation (D) Force: Police Officer Joseph Borrero used physical force against § 87(2)(b)

Allegation (E) Force: Police Officer Michael Cefarello used physical force against § 87(2)(b)

Allegation (F) Force: Police Officer Nicole Fox used physical force against § 87(2)(b)

Allegation (G) Force: Officers used physical force against § 87(2)(b)

Allegation (H) Force: Officers used physical force against § 87(2)(b)

Allegation (I) Force: Officers restricted § 87(2)(b)'s breathing.

On October 28, 2019, § 87(2)(b) provided a telephone statement (Board Review 03), and on November 6, 2019, § 87(2)(b) was interviewed at the CCRB (Board Review 04). On December 27, 2019, § 87(2)(b) provided a telephone statement (Board Review 05), and on December 30, 2019, § 87(2)(b) was interviewed at the CCRB (Board Review 06). On March 26, 2020, § 87(2)(b) provided a telephone statement (Board Review 07). On May 4, 2020, § 87(2)(b) provided a telephone statement (Board Review 08). Police Officer Christopher Padin of PSA 1 was interviewed on September 1, 2020 (Board Review 09). Police Officer Martinez was interviewed on September 8, 2020 (Board Review 10). Police Officer Joseph McDonald and Police Officer Alan Lee of the 60th Precinct were interviewed on September 18, 2020 (Board Review 11,12). Police Officer Kennedy and Police Officer Papadopoulos were interviewed on September 24, 2020 (Board Review 13, 14). Lieutenant Varriano was interviewed on December 22, 2020 (Board Review 15). Sergeant Anzor Zak of PSA 1 was interviewed on January 14, 2021 (Board Review 16). Police Officer Vidal was interviewed on January 21, 2021 (Board Review 17). Police Officer Borrero was interviewed on February 9, 2021 (Board Review 18). After additional BWC footage filmed by Police Officer Kennedy was received, a follow-up interview was conducted with Police Officer Kennedy on March 2, 2021 (Board Review 19).

§ 87(2)(b) stated that § 87(2)(b) and § 87(2)(b) chased him to West 24th Street, and Mermaid Avenue, where Police Officer Kennedy, Police Officer Borrero, Police Officer Fox, and Police Officer Cefarello were gathered, and he requested their assistance. § 87(2)(b) refused to back up after being ordered to do so multiple times, and Police Officer Borrero brought him down to the ground, but § 87(2)(b) did not recall how. § 87(2)(b) offered physical

resistance by twisting his torso back and forth. All four officers then grabbed § 87(2)(b) arms, and Police Officer Kennedy, Police Officer Borrero, and Police Officer Cefarello punched him multiple times in his head. One officer had a knee in § 87(2)(b) back. Additional officers began arriving at the scene, and § 87(2)(b) and § 87(2)(b) tried to grab § 87(2)(b) and separate him from the officers while he was being handcuffed, and one person punched Police Officer Borrero in the back of his head. Police Officer Kennedy, Police Officer Borrero, Police Officer Fox, and Police Officer Cefarello punched § 87(2)(b) both before and after he was handcuffed. The officers hit both § 87(2)(b) and § 87(2)(b). Two officers grabbed § 87(2)(b) by his arms and ordered him to get on the ground, but he did not comply and twisted his torso. The officers then brought § 87(2)(b) down to the ground. § 87(2)(b) did not see § 87(2)(b) being apprehended.

§ 87(2)(b) stated that he saw § 87(2)(b) throw a punch while arguing with § 87(2)(b) and § 87(2)(b). An unknown male officer brought § 87(2)(b) down to the ground by grabbing him around his neck, and § 87(2)(b) fell onto his back. Additional officers arrived at the scene, and two of them grabbed § 87(2)(b) arms and brought him down onto the ground. An unknown officer then punched § 87(2)(b) in his face. § 87(2)(b) was unable to identify or describe any of the officers who used force against § 87(2)(b) beyond them each being a white male. § 87(2)(b) tried to grab § 87(2)(b) while he was being arrested, and § 87(2)(b) left the area.

None of the BWC footage captures the initial moments of § 87(2)(b) or § 87(2)(b)'s arrests, and § 87(2)(b) and § 87(2)(b) are not seen on the ground or being placed in a chokehold in any video.

§ 87(2)(g)

Allegation (J) Discourtesy: Police Officer Michael Kennedy spoke discourteously to § 87(2)(b).

Allegation (K) Offensive Language: Police Officer Michael Kennedy made remarks to § 87(2)(b) based upon the gender of § 87(2)(b).

Allegation (U) Discourtesy: Police Officer Joseph Borrero spoke discourteously to § 87(2)(b).

Police Officer Kennedy's first BWC video (runtime 01:36, Board Review 45) shows Police Officer Kennedy approaching § 87(2)(b) while he is being held on the ground by the bail bondsman's investigator (see § 87(2)(g)), while § 87(2)(b) and § 87(2)(b) are in the custody of other officers at the corner. As he approaches § 87(2)(b) Police Officer Kennedy says, "He's mine, this one's mine. He's mine, this pussy. That pussy's mine."

Police Officer Borrero's first BWC video (runtime 02:29, Board Review 46) shows Police Officer Borrero placing § 87(2)(b) into a police vehicle. While Police Officer Borrero is holding § 87(2)(b) against the side of the vehicle, § 87(2)(b) asks for a favor, and Police Officer Borrero tells him to "shut the fuck up." As he is entering the vehicle, § 87(2)(b) says, "I know how to sit down," and Police Borrero replies, "Shut the fuck up."

When shown his footage, Police Officer Kennedy identified himself as the person who said, “That pussy’s mine.” He explained during his CCRB interview, “I guess it was just in the heat of the moment, it kind of just came out. I was just assaulted multiple times by multiple people.” He also noted that he was cursed out and called a “pussy” himself prior to this moment.

When shown his BWC footage, Police Officer Borrero said he told § 87(2)(b) to “shut the fuck up” as § 87(2)(b) sat down this because he did not realize what § 87(2)(b) had said. Police Officer Borrero did not recognize the voice that told § 87(2)(b) to “shut the fuck up” when § 87(2)(b) asked for a favor as his own.

According to Patrol Guide Procedure 200-02 (Board Review 21), the NYPD is committed to “treating every citizen with compassion, courtesy, professionalism, and respect.”

While officers are generally prohibited from using profanities toward civilians, they may use profanities “in the context of a dynamic situation over which [he or she is] attempting to gain control,” but may not do so when it “[serves] no legitimate purpose but to belittle” a civilian (PD v. Pichardo, DAO DCT Case Number 2015-15012, Board Review 21).

§ 87(2)(g)

§ 87(2)(g)

Allegation (L) Abuse of Authority: Police Officer Theodore Papadopoulos stopped § 87(2)(b).

Allegation (M) Force: Police Officer Theodore Papadopoulos used physical force against § 87(2)(b).

Allegation (N) Force: Police Officer Theodore Papadopoulos restricted § 87(2)(b) s breathing.

Allegation (O) Force: Police Officer Oliver Vidal restricted § 87(2)(b) s breathing.

Allegation (P) Force: Police Officer Oliver Vidal used physical force against § 87(2)(b).

Allegation (Q) Force: Lieutenant Vincent Varriano used a chokehold against § 87(2)(b).

Allegation (R) Force: Lieutenant Vincent Varriano restricted § 87(2)(b) s breathing.

Allegation (S) Discourtesy: Lieutenant Vincent Varriano spoke discourteously to § 87(2)(b).

Allegation (T) Force: Lieutenant Vincent Varriano used physical force against § 87(2)(b).

§ 87(2)(b) stated that as the officers were arresting § 87(2)(b) an officer told him to go home, and a male began approaching him from across Mermaid Avenue. § 87(2)(b) sprinted across Mermaid Avenue and south on West 24th Street toward his building because he wanted to get home. Police Officer Vidal was driving north on West 24th Street when he encountered § 87(2)(b).

§ 87(2)(b) and he exited his vehicle and attempted to block § 87(2)(b)'s path. § 87(2)(b) fell to the ground and broke his fall with his hands. He did not notice any officers chasing him before falling. The officers got on top of § 87(2)(b) while his hands were underneath his chest. Police Officer Papadopoulos delivered one punch to each side of § 87(2)(b)'s head. § 87(2)(b) moved his hands towards his head to try to block Police Officer Papadopoulos' punches. He did not move his body in any other fashion while he was on the ground. Police Officer Papadopoulos then placed his knee on § 87(2)(b)'s back, restricting his breathing for approximately two to three minutes. Police Officer Vidal also placed a knee on § 87(2)(b)'s back and struck him, but § 87(2)(b) could not specify how Police Officer Vidal struck him. Meanwhile, Lieutenant Varriano placed a knee on § 87(2)(b)'s neck, further restricting his breathing. Police Officer Papadopoulos told § 87(2)(b) to stop resisting, and § 87(2)(b) replied that he was not resisting and that he could not breathe. Lieutenant Varriano said, "I don't give a fuck, I don't care." The officers continued to tell § 87(2)(b) to stop resisting, and he brought his hands from his head to behind his back. As the officers began to get off of § 87(2)(b) and stand up, Lieutenant Varriano kicked § 87(2)(b) in his face two to three times. § 87(2)(b) believed he was struck more than ten times in total, but he was not sure. Police Officer Papadopoulos lifted himself from the ground by placing his hand and his weight on § 87(2)(b)'s face, pushing § 87(2)(b)'s face down, and scrubbing his right cheek against the pavement, resulting in scrapes to his cheek.

A photograph of § 87(2)(b) taken at the CCRB (Board Review 22) shows a scar on § 87(2)(b)'s right cheek, which he stated was from Police Officer Papadopoulos scraping his face against the pavement.

§ 87(2)(b) stated that he did not see the moment when officers caught § 87(2)(b). However, he noted that § 87(2)(b) was "trying to not get arrested," and § 87(2)(b) believed § 87(2)(b) offered physical resistance. After § 87(2)(b) was handcuffed, a uniformed white male officer punched § 87(2)(b) in his face. § 87(2)(b)'s breathing did not appear to be restricted, and § 87(2)(b) was unaware of § 87(2)(b) complaining of his breathing being restricted. The officers did not appear to apply pressure to any part of § 87(2)(b)'s body. § 87(2)(b) was unaware of any officer using profanities towards § 87(2)(b). § 87(2)(b) did not see any officer use any other force against § 87(2)(b) including scrubbing his face against the pavement.

§ 87(2)(b) stated that she received a phone call from her son, § 87(2)(b) who said § 87(2)(b) was "being attacked." § 87(2)(b) ran from § 87(2)(b) toward the corner of Mermaid Avenue and West 24th Street, and she encountered a crowd of officers and civilians. She asked the officers if she could see § 87(2)(b) and heard him calling for her. § 87(2)(b) ran towards § 87(2)(b) and saw officers, including Lieutenant Varriano, stepping and kneeling on his back. § 87(2)(b) did not see the officers use any other force against § 87(2)(b). § 87(2)(b) had a wound and dirt on his face.

§ 87(2)(b) arrived at the scene after § 87(2)(b) and saw § 87(2)(b) "all beat up," but he did not see any officers use force against § 87(2)(b).

Police Officer Papadopoulos' BWC footage (Board Review 23, 24) begins with him chasing § 87(2)(b) across Mermaid Avenue from the northeast corner of West 24th Street. At runtime 00:13 of the first video, he reaches § 87(2)(b) who is on the ground. Numerous officers' hands are seen making contact with § 87(2)(b) but it is unclear what is happening in these moments because Police Officer Papadopoulos is directly over § 87(2)(b) everyone is moving rapidly, and the scene is dark. Police Officer Papadopoulos' video ends during this struggle, and his second video begins one second after the first one ends. At runtime 00:13 of the second video (timestamp 20:32:09), § 87(2)(b) says, "I can't breathe!" and a male voice in the foreground responds, "I

don't care." It is unclear whether any officer punches or kicks § 87(2)(b) or places a knee on his back or neck. At runtime 00:24, Police Officer Papadopoulos places his hand on § 87(2)(b)'s back, stands up, and lifts § 87(2)(b) off the ground. Police Officer Papadopoulos does not appear to place his hand on § 87(2)(b)'s face at any point.

Lieutenant Varriano's BWC footage (Board Review 25) shows him over § 87(2)(b) while officers are on the ground handcuffing § 87(2)(b). Where Lieutenant Varriano's feet and knees are placed at this moment is not seen. Lieutenant Varriano is not seen kicking § 87(2)(b) and no discernable instances of force are seen on this video. At runtime 00:46 (timestamp 20:32:09), Lieutenant Varriano is seen standing next to the officers handcuffing § 87(2)(b) and the male voice heard in Police Officer Papadopoulos' BWC footage saying "I don't care" is not heard. Lieutenant Varriano approaches unidentified bystanders who had gathered on the sidewalk and tells them to get back, and one of them says, "You stepped on his head." Later, a runtime 02:16, the female civilian is heard saying, "He stomped him in his head."

At runtime 01:45 of Police Officer Ertan Kulug's BWC footage (Board Review 26), the same unidentified female civilian is heard saying Lieutenant Varriano kicked § 87(2)(b) in his head.

Police Officer Vidal's BWC footage (Board Review 27) shows him standing over and walking around the officers attempting to apprehend § 87(2)(b) on the ground. He does not appear to make physical contact with § 87(2)(b) while § 87(2)(b) is on the ground. At runtime 01:11, an officer asks Police Officer Vidal, "What are they looking for?" and he responds, "I don't know, this knife came out his pocket." At runtime 03:28, § 87(2)(b) says, "I ran because the girl kept swinging on me and I swung back. That's all I did."

Police Officer Padin's, Police Officer McDonald's, and Police Officer Lee's BWC footage (Board Review 28, 29, 30) also captures the struggle to handcuff § 87(2)(b). No officer is seen punching, kicking, or kneeling on § 87(2)(b) in any of the remaining BWC videos. The area is dark, and the numerous officers surrounding § 87(2)(b) obscure the views of any distinct acts of force used against § 87(2)(b).

A Threat, Resistance, and Injury (TRI) Worksheet prepared by Police Officer Papadopoulos (Board Review 31) states that § 87(2)(b) alleged that an officer in a white vest (determined by the investigation to be Lieutenant Varriano) kicked him while he was on the ground. It does not indicate that any officer actually used force against § 87(2)(b).

Police Officer Papadopoulos stated that he arrived at the scene in response to a request for assistance and saw § 87(2)(b) "square up" with a female and swing at her, but he did not believe § 87(2)(b) struck her. Police Officer Papadopoulos told § 87(2)(b) to stop, and § 87(2)(b) ran south across Mermaid Avenue and down West 24th Street. Police Officer Papadopoulos ran after § 87(2)(b). Police Officer Vidal and Lieutenant Varriano arrived at the scene in their vehicle and attempted to grab § 87(2)(b) and § 87(2)(b) ran past them and then fell to the ground, landing on his face and tossing a knife. Police Officer Papadopoulos then got on top of § 87(2)(b) while he was prone on the ground. One of Police Officer Papadopoulos' knees was on the ground, while the other was on the "small" of § 87(2)(b)'s back (Later, when asked twice to explain where the "small" of someone's back is, Police Officer Papadopoulos said twice that he did not recall exactly where his knee was. Police Officer Papadopoulos later stated that he may have been in a squatting position). § 87(2)(b) was "rigid" and did not allow the officers to handcuff him, and Police Officer Papadopoulos punched § 87(2)(b)'s shoulder and arm to gain his compliance. He did not recall how many times he punched § 87(2)(b). Police Officer Papadopoulos handcuffed § 87(2)(b) but he did not recall how long it took him to do so. Police Officer Papadopoulos denied

scrubbing § 87(2)(b)'s face against the pavement. Police Officer Papadopoulos believed § 87(2)(b) was taken to the stationhouse and issued a summons, and he did not recall § 87(2)(b) being released at the scene without a summons.

After being shown his BWC footage, Police Officer Papadopoulos stated that he did not know whose voice is heard during the struggle with § 87(2)(b) saying, "Shut up, shut up," and, "I don't care," but he noted it could be his own voice. This video did not further refresh Police Officer Papadopoulos's recollection of how he was positioned against § 87(2)(b) on the ground. He could not tell whether his or anyone else's knee was on § 87(2)(b)'s back.

Police Officer Vidal stated that he saw Police Officer Papadopoulos and Police Officer Padin chasing § 87(2)(b) south on West 24th Street. He exited his vehicle and attempted to grab § 87(2)(b) who did a "two-step" and evaded him, and both he and § 87(2)(b) fell the ground approximately ten feet apart, and the officers caught up to § 87(2)(b). Police Officer Vidal stood up and did not make any physical contact with § 87(2)(b) until after he was handcuffed. Police Officer Vidal did not put his knee on § 87(2)(b)'s back or neck, restrict § 87(2)(b)'s breathing in any way, or punch or kick § 87(2)(b) and he did not know of any other officer doing so.

Lieutenant Varriano stated that he exited his vehicle as Police Officer Papadopoulos and Police Officer Padin were chasing § 87(2)(b). Lieutenant Varriano tried to grab § 87(2)(b) and grazed his shoulder, and § 87(2)(b) "maneuvered from [his] grasp" and fell to the ground onto his face. § 87(2)(b) shimmied his shoulders and said, "I didn't do anything!" Lieutenant Varriano both stated that § 87(2)(b) was "flailing" his arms and trying to keep them underneath his body to avoid being handcuffed. Lieutenant Varriano lightly placed one foot on the side of § 87(2)(b)'s shoulder to prevent him from moving his shoulder. Lieutenant Varriano did not make contact with § 87(2)(b) other than placing his foot on § 87(2)(b)'s shoulder. Neither Lt. Varriano nor any other officer punched or kicked § 87(2)(b). § 87(2)(b) placed a knee on his back, or scrubbed his face against the pavement. § 87(2)(b)'s breathing did not appear to be restricted or labored, and he did not complain of such.

None of the other officers interviewed recalled Police Officer Papadopoulos, Police Officer Vidal, or Lieutenant Varriano punching, kicking, or kneeling on § 87(2)(b).

An officer may stop and detain an individual if he or she has reasonable suspicion that the individual has committed, is committing, or is about to commit a crime (People v. DeBour, 40 N.Y.2d 210, Board Review 21).

Patrol Guide Procedure 221-01 (Board Review 21) allows officers to use force when it is reasonable to ensure the safety of a member of the service, or when it is reasonable to place a person in custody. Factors to be considered in determining whether the use of force is reasonable include the following: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject; members of service or bystanders; whether the subject is actively resisting custody; whether the subject is attempting evade arrest by flight; the number of subjects in comparison to the number of members of service; size, age and condition of the subject in comparison to the member of service; subject's violent history if known; presence of hostile crowd or agitators; and whether the subject is apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase likelihood of violence." Patrol Guide Procedure 221-01 prohibits officers from "sitting, kneeling, or standing on the chest or back of a subject in a manner that compresses the diaphragm, thereby reducing the subject's ability to breathe."

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

§ 87(2)(g) [Redacted text block]

Allegation (V) Force: Police Officer Dorina Hajderlli used physical force against § 87(2)(b)

§ 87(2)(b) stated that when she arrived at the scene, she saw § 87(2)(b) on the ground, and she tried to approach him, an officer who she was unable to describe pushed her away from him without telling her to move away. § 87(2)(b) saw that § 87(2)(b) was hurt, and then she passed out and lost consciousness.

Police Officer Dorina Hajderlli's BWC footage (runtime 02:26, Board Review 32) shows § 87(2)(b) arriving at the scene while § 87(2)(b) is on the ground and surrounded by officers. § 87(2)(b) asks to see § 87(2)(b) and Police Officer Hajderlli says, "They're gonna hold your son, just stand over there, please." § 87(2)(b) says, "I'm going around this way," and begins to walk toward the other side of a marked van that is parked near § 87(2)(b). Police Officer Hajderlli follows behind § 87(2)(b) and says, "Ma'am, you cannot go over there." When they reach the front of the van, Police Officer Hajderlli moves in front of § 87(2)(b) briefly touches the tips of her fingers against the front of § 87(2)(b)'s right shoulder, and says, "Just stand over there, just stand over there. He's gonna be okay." § 87(2)(b) then collapses to the ground.

§ 87(2)(g)

Allegation (W) Force: Police Officer Jared Martinez used physical force against § 87(2)(b)

Allegation (X) Force: Police Officer Joseph Borrero used a chokehold against § 87(2)(b)

Allegation (Y) Force: Police Officer Joseph Borrero used physical force against § 87(2)(b)

§ 87(2)(b) stated that while he was standing outside of Kennedy Fried Chicken waiting for his food, Police Officer Martinez approached him from behind, grabbed his shoulder, and swept his legs out from underneath him without saying anything to him beforehand. § 87(2)(b) fell head-first and hit his head against the pavement, resulting in a bruise and leaving him dazed. § 87(2)(b) turned around to try to figure out who brought him to the ground. An officer bent § 87(2)(b)'s arm back and told him to stop resisting. Police Officer Borrero placed his arm on the right side of § 87(2)(b)'s neck for approximately three to four minutes, and he used his weight to push his face against the ground. Police Officer Borrero placed his knee on § 87(2)(b)'s back, causing § 87(2)(b) to get dizzy and nauseous, but he noted that he did not have difficulty breathing (In his telephone statement, § 87(2)(b) stated that Police Officer Borrero placed the knee on his neck, rather than his back). Police Officer Borrero also elbowed § 87(2)(b) in his head. § 87(2)(b) was handcuffed and passed to Police Officer Borrero, who took him to a police vehicle. Once § 87(2)(b)'s body was low enough to step into the back seat, Police Officer Borrero pushed him in his shoulder, and he landed on the seat.

§ 87(2)(b) saw § 87(2)(b) being arrested, but he did not describe any force being used against him. § 87(2)(b) and § 87(2)(b) did not describe witnessing the arrest of § 87(2)(b).

Police Officer Martinez's second BWC video (Board Review 33) shows him running toward § 87(2)(b) from behind. § 87(2)(b) falls to the floor, but it is unclear whether Police Officer Martinez

forcibly brings him down to the ground. The video ends shortly thereafter when the officers tell § 87(2)(b) to put his hands behind his back. No officer is seen with an arm on § 87(2)(b)'s neck or with a knee on his back, and no officer is seen elbowing § 87(2)(b) in his head.

Police Officer Martinez's third BWC video (Board Review 47) begins with him over § 87(2)(b)'s waist while he is on his left side. Police Officer Martinez and Sergeant Zak are seen handcuffing § 87(2)(b) and Police Officer Borrero is seen holding § 87(2)(b)'s face against the ground with his hand through § 87(2)(b)'s sweater. At no point does any officer place a knee on § 87(2)(b)'s back or hold an arm against § 87(2)(b)'s neck.

Police Officer Borrero's second BWC video (Board Review 48) shows him engaged in the struggle with § 87(2)(b) on the ground. At runtime 00:30, Police Officer Borrero places his left hand against the right side of § 87(2)(b)'s face and appears to hold his hand against the ground. At this moment, Police Officer Borrero is crouched to § 87(2)(b)'s right, Police Officer Martinez and another officer kneel on § 87(2)(b)'s legs, and § 87(2)(b) appears to be on his left side. At no point does Police Officer Borrero appear to kneel on § 87(2)(b) or elbow him in the head. However, at times, the footage does not capture § 87(2)(b)'s upper body.

Police Officer Borrero's third BWC video (Board Review 49) shows him transporting § 87(2)(b) to the stationhouse and does not show him placing § 87(2)(b) inside the police vehicle.

Police Officer Leah Hernandez's BWC (runtime 00:45, Board Review 50) captures Police Officer Martinez and Police Officer Vidal placing § 87(2)(b) into the police vehicle., but the view of § 87(2)(b) is obstructed by their bodies. While § 87(2)(b) is seated in the back seat, his feet are seen outside the vehicle, and the officers shout at him to place his feet inside the vehicle. The officers then close the door. It is unclear whether any officer pushes § 87(2)(b) into the vehicle.

None of the other BWC videos capture any of the force alleged by § 87(2)(b)

Police Officer Martinez stated that after it was determined that § 87(2)(b) did not assault Police Officer Kennedy and he was released from the handcuffs, he asked § 87(2)(b) who punched Police Officer Kennedy, and he pointed at § 87(2)(b) and said, "That's him right there... the guy right behind you." Police Officer Martinez snuck up ("did a fast walk") behind § 87(2)(b) without announcing himself and put his hands on § 87(2)(b)'s shoulders. § 87(2)(b) turned around, saw that Police Officer Martinez was an officer, and dropped to the floor on his own ("he completely went dead weight"). Police Officer Martinez tried to stop § 87(2)(b) from "freefalling" to the ground, so he "fell with him" and "propped him up a little bit," but § 87(2)(b) fell onto the ground. Police Officer Martinez inadvertently landed on the ground, but he did not recall how he landed. Police Officer Martinez did not forcibly place § 87(2)(b) on the ground and did not see any other officer do so. At least two officers assisted Police Officer Martinez in the apprehension of § 87(2)(b) but Police Officer Martinez did not know who they were because he was focused on what was "in front of" him. Within "seconds" of Police Officer Martinez placing his hand on § 87(2)(b)'s shoulder, the officers handcuffed § 87(2)(b) and placed him under arrest. Police Officer Martinez did not use any force in placing § 87(2)(b) into custody. Police Officer Martinez did not recall § 87(2)(b) offering any resistance whatsoever, nor did he recall whether § 87(2)(b) remained "dead weight" while he was being handcuffed. Police Officer Martinez did not recall Police Officer Borrero placing his arm against § 87(2)(b)'s neck, pushing his face against the ground, or placing his knee on § 87(2)(b)'s back. Police Officer Martinez did not see Police Officer Borrero elbow § 87(2)(b) in the head. Police Officer Martinez lifted § 87(2)(b) off the ground, walked him to a police vehicle, and placed him inside. Police Officer Martinez did not recall § 87(2)(b) offering any resistance after he was handcuffed. He did not push § 87(2)(b) into

the police vehicle and did not recall any other officer doing so.

Before being shown his BWC footage, Police Officer Borrero stated that he believed officers from PSA 1 apprehended § 87(2)(b) and that he was the one who transported § 87(2)(b) to the stationhouse, but he did not see or “have any contact” with § 87(2)(b) prior to transporting him. Police Officer Borrero placed § 87(2)(b) inside a police vehicle, to which § 87(2)(b) did not offer any physical resistance. Police Officer Borrero did not recall § 87(2)(b) refusing to place his feet inside the vehicle, and he did not push § 87(2)(b) into the vehicle.

After watching his BWC footage, Police Officer Borrero stated that he still did not recall seeing § 87(2)(b) being arrested, but he noted, “Clearly I ran over to something.” This video did not refresh Police Officer Borrero’s memory of anything else that happened with § 87(2)(b). He noted, “It looked like it was done by the time I got there, and then a boss told me to transport him back. I had nothing to do with that.”

None of the other officers interviewed recalled the force alleged by § 87(2)(b).

§ 87(2)(b) stated that Police Officer Martinez brought him down to the ground by sweeping his legs out from underneath him, and that Police Officer Borrero elbowed him in his head while he was on the ground and pushed him into a police vehicle. Police Officer Martinez stated that he placed his hands on § 87(2)(b)’s shoulders, and § 87(2)(b) dropped to the ground on his own. Police Officer Martinez’s BWC shows § 87(2)(b) going down to the ground, but the means by which he falls is unclear. Police Officer Borrero did not recall making physical contact with § 87(2)(b) until after he was handcuffed, nor did he recall any details beyond what is captured on his BWC footage, which shows his hand on § 87(2)(b)’s face and is unclear as to whether he elbowed § 87(2)(b). Police Officer Hernandez’s BWC shows Police Officer Vidal and Police Officer Martinez placing § 87(2)(b) into the police vehicle. Police Officer Borrero is not seen at this moment, and it is unclear whether any officer pushes § 87(2)(b) into the vehicle. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Police Officer Borrero’s and Police Officer Martinez’s BWC videos show that Police Officer Martinez was crouched to § 87(2)(b)’s right while § 87(2)(b) was on his side and Police Officer Martinez was kneeling on § 87(2)(b)’s legs. Police Officer Borrero is seen holding § 87(2)(b)’s face against the ground, and neither he nor any other officer is seen holding an arm against § 87(2)(b)’s neck or a knee against § 87(2)(b)’s back at any point. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation Not Pleaded

§ 87(2)(b) stated that an officer placed a knee on § 87(2)(b)’s back, and in Police Officer Kennedy’s first BWC video (runtime 02:05, Board Review 45), a male in plainclothes is seen kneeling on § 87(2)(b)’s neck or back while he is on the ground. After § 87(2)(b) is handcuffed, this male approaches Police Officer Kennedy and tells him he is an investigator for a bail bondsman and that he saw the earlier fight. In his CCRB interview Police Officer Kennedy recalled that a bail bondsman assisted him in his arrest of § 87(2)(b) and when shown this footage, he stated that he did not recognize this individual as a police officer. § 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been a party to one other CCRB complaints and has not been named as a victim in any allegations (Board Review 34).
 - § 87(2)(b)
- § 87(2)(b) has been a party to five other CCRB complaints and has been named as a victim in seven other allegations (Board Review 34).
 - § 87(2)(b)
- § 87(2)(b) has been a party to five other CCRB complaints and has been named as a victim in one other allegation (Board Review 34).
 - § 87(2)(b)
- § 87(2)(b) has been a party to one other CCRB complaint and has been named a victim in five other allegations (Board Review 34).
 - § 87(2)(b)
- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties (Board Review 34).
- Police Officer Michael Kennedy has been a member of service for three years and has been a subject in two other CCRB complaints and four other allegations, none of which were substantiated. § 87(2)(g)
- Police Officer Joseph Borrero has been a member of service for five years and has been a subject in four other CCRB complaints and 13 other allegations, of which three were substantiated in one case.
 - 201911043 involved substantiated allegations of Threat of Arrest, Discourtesy: Word, and Offensive Language: Gender against Police Officer Borrero § 87(2)(e) The Board recommended Formalized Training, and the NYPD has not yet imposed discipline.

- § 87(2)(g) [REDACTED]
- Police Officer Nicole Fox has been a member of service for four years and has been a subject in two other CCRB complaints and six other allegations, of which one was substantiated.
 - 201802003 involved a substantiated Forcible Removal to Hospital allegation against Police Officer Fox. The Board recommended command-level instructions, and the NYPD took no disciplinary action.
- Police Officer Michael Cefarello has been a member of service for four years, and this is the first CCRB complaint to which he has been a subject.
- Police Officer Theodore Papadopoulos has been a member of service for six years and has been a subject in one other CCRB complaint and two other allegations, neither of which was substantiated. § 87(2)(g) [REDACTED].
- Police Officer Oliver Vidal has been a member of service for six years and has been a subject in two other CCRB complaints and five other allegations, none of which were substantiated. § 87(2)(g) [REDACTED].
- Lieutenant Vincent Varriano has been a member of service for 16 years and has been a subject in four other CCRB complaints and seven other allegations, none of which was substantiated. § 87(2)(g) [REDACTED].
- Police Officer Dorina Hajderlli has been a member of service for five years and has been a subject in one other CCRB complaint and two other allegations, neither of which was substantiated. § 87(2)(g) [REDACTED].
- Police Officer Jared Martinez has been a member of service for five years and has been a subject in five other CCRB complaints and 11 other allegations, of which one was substantiated.
 - 201808371 involved a substantiated Discourtesy: Word allegation. The Board recommended command-level instructions, and the NYPD imposed a penalty of command-level instructions.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of March 23, 2021, the New York City Office of the Comptroller has no record of a notice of claim being filed regarding this incident (Board Review 42).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
- [REDACTED]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 02

Investigator: SI Jean-Paul Lozada SI Jean-Paul Lozada 10/20/2021
Signature Print Title & Name Date

Squad Leader: Alexander Opoku-Agyemang IM Alexander Opoku-Agyemang 10/20/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date